# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JEANETTE C. DAVIS	)	
Claimant	)	
VS.	)	
	) Docket No. 245,0	71
EVCON INDUSTRIES, INC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	

# ORDER

Claimant appealed the July 30, 1999 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

#### ISSUES

This is a claim for a May 20, 1999 injury. On that date claimant was hit by a car in the respondent's parking lot while trying to break up a fight. The Judge denied claimant's request for benefits after finding that the injury did not arise out of claimant's employment. That is the only issue before the Appeals Board on this review.

### FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

- 1. The claimant, Jeanette C. Davis, was injured on May 20, 1999, when a car struck her while she was attempting to break up a fight between her sister and several other individuals. The driver of the car was one of the individuals involved in the fight.
- 2. On the date of injury, Ms. Davis was working for Evcon Industries, Inc., as a forklift driver. During her lunch break she noticed her sister fighting in the company parking lot. Ms. Davis then went to the parking lot and tried to stop the fight. One of the individuals involved in the fight then struck Ms. Davis with a car.

## Conclusions of Law

- 1. The Order denying benefits should be affirmed.
- 2. The Judge found that the injury did not arise out of Ms. Davis' employment. The Appeals Board agrees.
- 3. An injury must arise out of and occur in the course of a worker's employment to be compensable under the Workers Compensation Act.<sup>1</sup>
- 4. For an assault stemming from a purely personal matter to be compensable, the worker must prove that the injuries sustained were exacerbated by an employment hazard.<sup>2</sup>
- 5. Based upon the present record, the Appeals Board concludes that Ms. Davis' injuries did not arise out of her employment with Evcon Industries, Inc. Instead, the injuries arose from an assault stemming from a personal matter unrelated to Ms. Davis' job or any employment hazard.

**WHEREFORE**, the Appeals Board finds that the July 30, 1999 Order should be affirmed.

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Dated this	day of September 1999.
	BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS Vincent A. Burnett, Wichita, KS Jon L. Frobish, Administrative Law Judge Philip S. Harness, Director

IT IS SO OPDEPED

<sup>&</sup>lt;sup>1</sup> K.S.A. 44-501(a).

Baggett v. B & G Construction, 21 Kan. App. 2d 347, 900 P.2d 857 (1995).